

Appl. No. 10/633/738
Atty. Docket No. 9151R
Response. Dated: September 23, 2004
Reply to Office Action of March 23, 2004
Customer No. 27752

REMARKS

Claims 1-32 are pending in the present application. No additional claims fee is believed to be due.

Claim Objections

The Office Action states that Claim 2 is objected to because the term "phosphoric acid" is listed twice. Applicant has herein amended Claim 2 to delete the extra term "phosphoric acid" from the Claim.

Rejection Under 35 USC § 103

The Office Action states that claims 1-27 are rejected under 35 USC § 103 over a combination of Marlett *et al.*, U.S. Patent No. 6,287,609 (herein referred to as "Marlett") and Nakamura *et al.*, U.S. Patent No. 6,045,847 (herein referred to as "Nakamura") or Colliopoulos, U.S. Patent No. 5,009,916 (herein referred to as "Colliopoulos"). Applicants respectfully traverse this rejection and assert that there is no teaching, motivation, or suggestion to combine the cited references in view of the current invention. Indeed, Applicants respectfully assert that the Examiner has failed to present a *prima facie* case of obviousness in view of the lack of such teaching, motivation, or suggestion.

Indeed, "the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggest the desirability of the combination." See MPEP 2143.01 and also *In Re Mills*, 916 F.2d 680 (Fed. Cir. 1990); "there must be a suggestion or motivation in the reference to do so." *Id.* For at least the following reasons, the combination proposed by the Examiner has failed to meet these requisite tests.

Products containing psyllium seed husk are currently widely used for normalizing bowel function and laxation. Psyllium seed husk contains natural mucilage that forms a gelatinous mass on contact with water. Thus, milled psyllium seed husk, with its increased surface area, is known to exhibit poor dispersability and mixability with water, or upon contact with saliva, as the components tend to form an undesirable gel. Known chewable and liquid forms of psyllium husk have been used in the past and have resulted in a number of problems and inconvenience to consumers. Thus, compositions

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comprising xylose and arabinose have been found to result in improved gellation and solves a long felt need in the art to avoid the problems experienced by consumers in the past.

The Office Action states that Nakamura shows that compositions that comprise xylose and arabinose are well known in the art. Nakamura relates to a rice cooking method wherein a water-soluble hemicellulose is added to rice for improved soaking of rice and for consistency of texture. The Examiner has concluded that a component for improving soaking time or quality enhancers of rice as disclosed in Nakamura obviates the dispersing components disclosed in accordance with the present invention. Nakamura does not teach dispersing components for compositions containing a polysaccharide component. The dispersing components are described in the present specification on pages 8-11 as useful for providing more consumer-acceptable products, particularly intended for dilution in an aqueous liquid prior to consumption, and as providing excellent properties in terms of dispersion or dissolution, mouthfeel, or resistance to sedimentation upon admixture with an aqueous liquid. Applicant submits that the dispersing components disclosed in the present invention are not obviated by the components described in Nakamura.

In addition, there would have been no motivation for persons of ordinary skill in the art to combine the disclosure relating to a water-soluble hemicellulose in Nakamura to compositions containing xylose and arabinose, as discussed in Marlett and the teachings of Colliopoulos, related to psyllium husk in a high fiber bar. In particular, given the benefits of the polysaccharide fraction described in Marlett, it would not have been expected that the artisan would successfully substitute components described in Nakamura or Colliopoulos with components described in Marlett, since Marlett teaches the removal of those components which contribute to the unpleasant and unsafe qualities of the husk; these components are all necessarily present in the compositions of Nakamura and Colliopoulos. More particularly, the dispersing components recited in the present invention further improve the long-felt need for improving the dispersion, dissolution, mouthfeel or resistance to sedimentation of a polysaccharide component when mixed with an aqueous liquid. It would therefore not have been obvious for a person of ordinary skill in the art to combine the cited references. It is evident that one of ordinary skill in the art seeking to further improve upon the benefits of the polysaccharides described in Marlett et al. would not rely on current teachings of Nakamura or Colliopoulos.

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The present rejection should therefore be withdrawn on the basis of failure to establish the requisite *prima facie* case.

Moreover, even if a *prima facie* case were established (and Applicants contend that the Examiner has not done so), there would have been no reasonable expectation of success in combining the composition described in Nakamura, including the various excipients described therein, with the polysaccharide fraction described in Marlett. Again, Marlett makes clear that the fractions described therein exhibit dramatic differences in performance, particularly physical property, relative to other disclosed uses of xylose and arabinose containing compositions. As such, there would have been no expectation of success that adoption of the teachings of Nakamura would have been at all useful in combination with the polysaccharide fraction of Marlett. The compositions described in accordance with the present invention are, quite simply, materially different, having many different behaviors and properties.

In addition, the Office Action states that claims 11 and 14 are rejected under 35 USC §103(a) over Nakamura and Marlett further in view of Barbera (US Patent No. 5,425,945). Barbera discloses an agglomerated composition of psyllium husk. As discussed above, the xylose and arabinose containing psyllium composition disclosed in the present invention exhibits unexpected properties not otherwise seen in psyllium husk. The referenced patents further do not disclose a dispersing component as disclosed in accordance with the present invention. Applicant respectfully assert that this rejection fails for the same reasons as set forth above, namely failure to present a *prima facie* case of obviousness.

In addition, the Office Action states that Claims 1 and 28-32 are rejected under 35 USC § 103(a) over a combination of Colliopoulos and Marlett. Applicant respectfully asserts again that there is a demotivation of the ordinarily skilled artisan to rely on literature relating to psyllium husk for the successful optimization of polysaccharides fractions based on the inherent problems that have been found with psyllium husk in the past. In addition, the dispersing components recited in Claim 1 and 28-32 provide dramatic improvements in physical property when the polysaccharide components claimed are mixed in an aqueous liquid. It would thus not have been obvious to combine the teachings of Colliopoulos, with the teachings of Marlett. Applicants respectfully traverses the 35 USC § 103 rejection.


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CONCLUSION

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 USC § 103. Early and favorable action in this case is respectfully requested.

Applicants have made an earnest effort to place their application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, Applicants respectfully request reconsideration of this application, and allowance of Claims 1-32.

Respectfully submitted,
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September 23, 2004
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